

ASSEMBLY BILL

No. 2299

Introduced by Assembly Member Bloom

February 18, 2016

An act to amend Section 65852.2 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2299, as introduced, Bloom. Land use: housing: 2nd units.

The Planning and Zoning Law authorizes the legislative body of a city or county to regulate, among other things, the intensity of land use, and also authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential zones, as specified.

This bill would, instead, require a local agency to provide by ordinance for the creation of 2nd units in these zones. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65852.2 of the Government Code is
2 amended to read:

1 65852.2. (a) (1) ~~Any~~A local agency ~~may~~, *shall*, by ordinance,
2 provide for the creation of second units in single-family and
3 multifamily residential zones. The ordinance ~~may do any~~ *shall*
4 *do all* of the following:

5 (A) Designate areas within the jurisdiction of the local agency
6 where second units may be permitted. The designation of areas
7 may be based on criteria, that may include, but are not limited to,
8 the adequacy of water and sewer services and the impact of second
9 units on traffic flow.

10 (B) Impose standards on second units that include, but are not
11 limited to, parking, height, setback, lot coverage, architectural
12 review, maximum size of a unit, and standards that prevent adverse
13 impacts on any real property that is listed in the California Register
14 of Historic Places. *However, notwithstanding subdivision (d), a*
15 *local agency shall not impose parking standards for a second unit*
16 *that is located within one-half mile of public transit or shopping*
17 *or is within an architecturally and historically significant historic*
18 *district.*

19 (C) Provide that second units do not exceed the allowable
20 density for the lot upon which the second unit is located, and that
21 second units are a residential use that is consistent with the existing
22 general plan and zoning designation for the lot.

23 (2) The ordinance shall not be considered in the application of
24 any local ordinance, policy, or program to limit residential growth.

25 (3) When a local agency receives its first application on or after
26 July 1, 2003, for a permit pursuant to this subdivision, the
27 application shall be considered ministerially without discretionary
28 review or a hearing, notwithstanding Section 65901 or 65906 or
29 any local ordinance regulating the issuance of variances or special
30 use permits. ~~Nothing in this paragraph may be construed to require~~
31 ~~a local government to adopt or amend an ordinance for the creation~~
32 ~~of second units.~~ A local agency may charge a fee to reimburse it
33 for costs that it incurs as a result of amendments to this paragraph
34 enacted during the 2001–02 Regular Session of the Legislature,
35 including the costs of adopting or amending any ordinance that
36 provides for the creation of second units.

37 (b) (1) When a local agency ~~which~~ has not adopted an ordinance
38 governing second units in accordance with subdivision (a) ~~or (e)~~
39 receives its first application on or after July 1, 1983, for a permit
40 pursuant to this subdivision, the local agency shall accept the

1 application and approve or disapprove the application ministerially
2 without discretionary review pursuant to this subdivision unless
3 it adopts an ordinance in accordance with subdivision (a) ~~or (e)~~
4 within 120 days after receiving the application. Notwithstanding
5 Section 65901 or 65906, every local agency shall grant a variance
6 or special use permit for the creation of a second unit if the second
7 unit complies with all of the following:

8 (A) The unit is not intended for sale and may be rented.

9 (B) The lot is zoned for single-family or multifamily use.

10 (C) The lot contains an existing single-family dwelling.

11 (D) The second unit is either attached to the existing dwelling
12 and located within the living area of the existing dwelling or
13 detached from the existing dwelling and located on the same lot
14 as the existing dwelling.

15 (E) The increased floor area of an attached second unit shall
16 not exceed 30 percent of the existing living area.

17 (F) The total area of floorspace for a detached second unit shall
18 not exceed 1,200 square feet.

19 (G) Requirements relating to height, setback, lot coverage,
20 architectural review, site plan review, fees, charges, and other
21 zoning requirements generally applicable to residential construction
22 in the zone in which the property is located.

23 (H) Local building code requirements ~~which~~ *that* apply to
24 detached dwellings, as appropriate.

25 (I) Approval by the local health officer where a private sewage
26 disposal system is being used, if required.

27 (2) No other local ordinance, policy, or regulation shall be the
28 basis for the denial of a building permit or a use permit under this
29 subdivision.

30 (3) This subdivision establishes the maximum standards that
31 local agencies shall use to evaluate proposed second units on lots
32 zoned for residential use ~~which~~ *that* contain an existing
33 single-family dwelling. No additional standards, other than those
34 provided in this subdivision or subdivision (a), shall be utilized or
35 imposed, except that a local agency may require an applicant for
36 a permit issued pursuant to this subdivision to be an
37 owner-occupant.

38 (4) No changes in zoning ordinances or other ordinances or any
39 changes in the general plan shall be required to implement this
40 subdivision. ~~Any~~ A local agency may amend its zoning ordinance

1 or general plan to incorporate the policies, procedures, or other
2 provisions applicable to the creation of second units if these
3 provisions are consistent with the limitations of this subdivision.

4 (5) A second unit ~~which~~ *that* conforms to the requirements of
5 this subdivision shall not be considered to exceed the allowable
6 density for the lot upon which it is located, and shall be deemed
7 to be a residential use ~~which~~ *that* is consistent with the existing
8 general plan and zoning designations for the lot. The second units
9 shall not be considered in the application of any local ordinance,
10 policy, or program to limit residential growth.

11 ~~(e) No local agency shall adopt an ordinance which totally~~
12 ~~precludes second units within single-family or multifamily-zoned~~
13 ~~areas unless the ordinance contains findings acknowledging that~~
14 ~~the ordinance may limit housing opportunities of the region and~~
15 ~~further contains findings that specific adverse impacts on the public~~
16 ~~health, safety, and welfare that would result from allowing second~~
17 ~~units within single-family and multifamily-zoned areas justify~~
18 ~~adopting the ordinance.~~

19 ~~(d)~~

20 (c) A local agency may establish minimum and maximum unit
21 size requirements for both attached and detached second units. No
22 minimum or maximum size for a second unit, or size based upon
23 a percentage of the existing dwelling, shall be established by
24 ordinance for either attached or detached dwellings ~~which~~ *that*
25 does not permit at least an efficiency unit to be constructed in
26 compliance with local development standards.

27 ~~(e)~~

28 (d) Parking requirements for second units shall not exceed one
29 parking space per unit or per bedroom. Additional parking may
30 be required provided that a finding is made that the additional
31 parking requirements are directly related to the use of the second
32 unit and are consistent with existing neighborhood standards
33 applicable to existing dwellings. Off-street parking shall be
34 permitted in setback areas in locations determined by the local
35 agency or through tandem parking, unless specific findings are
36 made that parking in setback areas or tandem parking is not feasible
37 based upon specific site or regional topographical or fire and life
38 safety conditions, or that it is not permitted anywhere else in the
39 jurisdiction.

40 ~~(f)~~

1 (e) Fees charged for the construction of second units shall be
2 determined in accordance with Chapter 5 (commencing with
3 Section 66000).

4 ~~(g)~~

5 (f) This section does not limit the authority of local agencies to
6 adopt less restrictive requirements for the creation of second units.

7 ~~(h)~~

8 (g) Local agencies shall submit a copy of the ordinances adopted
9 pursuant to subdivision (a) ~~or (e)~~ to the Department of Housing
10 and Community Development within 60 days after adoption.

11 ~~(i)~~

12 (h) As used in this section, the following terms mean:

13 (1) "Living area," means the interior habitable area of a dwelling
14 unit including basements and attics but does not include a garage
15 or any accessory structure.

16 (2) "Local agency" means a city, county, or city and county,
17 whether general law or chartered.

18 (3) For purposes of this section, "neighborhood" has the same
19 meaning as set forth in Section 65589.5.

20 (4) "Second unit" means an attached or a detached residential
21 dwelling unit which provides complete independent living facilities
22 for one or more persons. It shall include permanent provisions for
23 living, sleeping, eating, cooking, and sanitation on the same parcel
24 as the single-family dwelling is situated. A second unit also
25 includes the following:

26 (A) An efficiency unit, as defined in Section 17958.1 of Health
27 and Safety Code.

28 (B) A manufactured home, as defined in Section 18007 of the
29 Health and Safety Code.

30 ~~(j)~~

31 (i) Nothing in this section shall be construed to supersede or in
32 any way alter or lessen the effect or application of the California
33 Coastal Act (Division 20 (commencing with Section 30000) of
34 the Public Resources Code), except that the local government shall
35 not be required to hold public hearings for coastal development
36 permit applications for second units.

37 SEC. 2. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 a local agency or school district has the authority to levy service
40 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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